

Remarks

1. Claim 18 has been amended in the manner suggested by the Examiner in order to address the clarity objection of section 2 of the Office Action. The Examiner is thanked for drawing the applicant's attention to the need for correction of claim 18.
2. The applicant offers no substantive amendments to the claims as currently pending in this application since, in the applicant's view, said claims define an invention that is both novel and non-obvious over the prior art of record for the reasons as previously presented during the course of the prosecution of this application.
3. The applicant maintains as entirely pertinent the whole of the submissions previously presented during the prosecution of this application. The following remarks are therefore presented in anticipation that it will be necessary to file an appeal in order to ensure that the previous submissions are properly considered. It is evident from a review of the prosecution history of this application that the Examiner has misconstrued the content of the prior art references of record, particularly Blahut (US5446490), to construct, with the aid of hindsight, 35 U.S.C. §103(a) rejections of the claims of the present application. Given this and the fact that the Examiner has neatly sidestepped properly responding to a number of the applicant's arguments as set out in the paper entitled "Remarks Accompanying Request for Continued Examination" dated November 22<sup>nd</sup>, 2004, the applicant formally requests that the Examiner relinquishes further consideration of this application to his Supervising Examiner.
4. The applicant takes this opportunity to recall that in *ex parte* examination of patent applications, the Patent and Trademark Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d

1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent and Trademark Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Plasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent and Trademark Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grablak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985). A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

5. With the burden incumbent on the Office as established in law in mind, the applicant presents the following comments. In the present invention it is only necessary to transmit one data stream comprising "original" content from a content service provider to a distribution server in a system where a client termination unit (subscriber unit) can be controlled by its respective subscriber to receive/display a

conveniently timed staggered one of a plurality (at least first and second) onward data streams from the distribution server, said onward data streams corresponding substantially to the original content from the content service provider and being transmitted from the distribution server offset in time. This is achieved by sending control data from the content service provider to the distribution server containing an offset value that enables the distribution server to stagger in time the transmissions of the plurality of onward data streams generated in said server from the (single) original content received from the content service provider. Thus, it is an essential feature of the present invention that the offset value utilized by the distribution server to control the time stagger of the plurality of onward data streams is provided by the content service provider. In contrast to known systems where the plurality of time staggered onward data streams are transmitted from the content service provider to the distribution or multi-cast server, the present invention greatly reduces the bandwidth required on the communications link between the content server provider to the distribution server which is highly desirable.

6. The Examiner's 35 U.S.C. §103(a) rejection of the claims of the present application can be summarized as Blahut teaches all of the features of the present invention (refer claim 1) save for the feature that the control data indicating the offset value is provided by the content service provider, that Hendricks (US5600573) discloses the transmission of control data from an operations centre to a local cable headend and that it would have been obvious to one of ordinary skill in the art to modify Blahut's system to include the control data being provided by the content service provider for the advantage of enabling a single site to remotely manage and control cable programming throughout a particular region.

7. The submissions as previously presented by the applicant during the prosecution of this application are directly pertinent to the position adopted by the Examiner and fully expose the failure of the Examiner to meet the burden incumbent on him to establish a *prima facie* basis to deny patentability of the present invention

as defined by the currently pending claims. The applicant requests that the Office properly reconsider these submissions and allow the present application.

8. In the present invention, the distribution server transmits the plurality of onward data streams in a time staggered fashion with each successive stream being transmitted an amount of time after the start of a preceding transmission determined by the offset value indicated in the control data received at the distribution server from the content service provider. In contrast, in Blahut, the ITV server seeks to reduce the number of time staggered versions of the same movie being transmitted but at the same time responding to subscribers' requests for the movie by starting it without delay. It achieves this by using different length starting portions transmitted on different respective channels so that the main portion of the movie can be transmitted simultaneously on the same channel to a plurality of subscribers whose requests were received at different times, the different length starting portions compensating for the time stagger of receipt of the subscribers' requests. Consequently, in the absence of any subscribers' requests, there will be no transmission of the movie from the ITV server. What this reveals is that, whatever else the control data used by the ITV server in Blahut comprises, it is essential that it comprises data pertaining to the respective times of the subscribers' requests for a movie and that these staggered temporal events (subscribers' requests) essentially comprise the time stagger data used by the ITV server. The subscribers' requests are received directly by the ITV server and thus this essential part of the control data is delivered from the subscriber units directly to the ITV server. What would possibly motivate one of ordinary skill in the art to modify the system of Blahut in the manner suggested by Hendricks which would require that this data be passed over the communication link to the content service provider (programming center 121 and program library 122) for it to then be transmitted back to the ITV server as control data? The delays inherent in doing this goes against the teaching of Balhut which seeks to minimize the delay between a subscriber requesting a movie and the movie (with appropriate staring portion pre-pended) being received by the subscriber. One

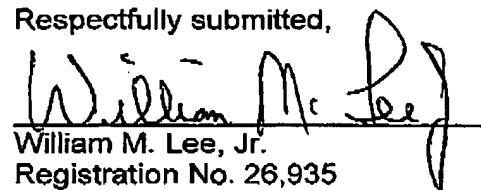
skilled in the art would not seriously contemplate such a modification since it comprises a logical nonsense.

9. The Examiner has made reference to figure 5 of Balhut. It is abundantly clear from this figure that the staggered starting times of the movie streams referenced 501 to 506 are entirely dependent on the respective times of receipt of corresponding subscribers' requests for a movie and thus there is no one so called "offset value" that can be derived therefrom. Taking streams 501 to 505, for example, it can be seen that the time stagger between any two of said streams can as a minimum be zero and at a maximum be  $t_1 - t_0$ . It is also clear that what the Examiner has coined "stored schedule indicating staggered start times" is absolutely dependent on the receipt times of the subscribers' requests received at the ITV server and that such schedule cannot be constructed in the absence of said data but is constructed from said data in addition to the data pertaining to the different lengths of the movie starting portions stored in the ITV server. In other words, the ITV server utilizes the data pertaining to the different lengths of the movie starting portions with the data indicative of the times of receipt of the subscribers' requests in order to select an appropriate starting portion for each subscriber and establish the so called "stored schedule indicating staggered start times". What would possess one of ordinary skill in the art to modify the system of Blahut in the manner suggested by Hendicks which would require either that the stored schedule indicating staggered start times established in the ITV server is transmitted to the content service provider (programming center 121 and program library 122) for it to then be transmitted back to the ITV server as control data or that the data indicative of the receipt times of the subscribers' requests is transmitted to the content service provider in order that it can then establish the schedule indicating staggered start times for this to then be transmitted to the ITV server as control data? In either case, this goes against the teaching of Balhut which seeks to respond quickly to subscribers' requests. A skilled addressee would not seriously contemplate any such modification.

10. In view of the foregoing, the applicant submits that the Examiner has not satisfied the burden established in law for denying patentability under 35 U.S.C. §103(a) and requests that the Office now allow this application.

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Respectfully submitted,



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